

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On April 6, 2015 appellant, then a 50-year-old electronics engineer, filed a traumatic injury claim (Form CA-1) alleging that on February 9, 2015 he sustained “multiple knee meniscal tears” due to walking up facility steps and working on platforms without hand rails a few feet off the ground. He stopped work on February 23, 2015 and returned to work on March 10, 2015.

In support of his claim appellant submitted a March 10, 2015 letter from Dr. Douglas Palma, a treating Board-certified orthopedic surgeon, diagnosing left leg joint pain and knee joint effusion. Dr. Palma provided work restrictions limiting appellant to a sedentary/desk position. The date-of-injury symptoms were noted as uncertain.

By correspondence dated April 15, 2015, OWCP informed appellant that the evidence of record was insufficient to establish his claim. Specifically, it noted that the evidence of record was insufficient to substantiate the factual portion of his claim and requested he respond to the questions in an attached development questionnaire. OWCP also found the medical evidence appellant submitted failed to contain a diagnosis. It advised appellant regarding the medical and factual evidence required to establish his claim and afforded him 30 days to provide this information.

In response to OWCP’s request for additional information, appellant submitted medical evidence which included October 16, 2014 and February 26, 2015 hospital operative reports; medical reports from 2010, 2013, and 2014 from Dr. Michael J. Pushkarewicz, a treating Board-certified orthopedic surgeon; and diagnostic test results.

In an October 28, 2014 report, Dr. Palma noted appellant had a history of osteoarthritis and a right knee arthroscopy. Diagnoses included left knee degenerative joint disease, left leg joint pain, left knee tear/sprain, and left knee joint effusion. A physical examination revealed a mild antalgic gait, mild incisional tenderness, and mild joint effusion. Appellant stated that his knee symptoms were aggravated by his daily activities, kneeling, bending, and ascending and descending stairs.

Dr. Palma, in reports dated February 10 and March 10, 2015, provided work restrictions and reported left knee medial joint line effusion and tenderness. Histories of right knee arthroscopy and prior knee injuries were given. In both reports, Dr. Palma wrote that appellant was seen for complaints of left knee pain and noted that he had left knee surgery on October 16, 2014. Appellant related that the knee pain had begun approximately three weeks prior and that he was on his feet all day. He was limited to sedentary work and provided work restrictions.

In an April 7, 2015 note, Dr. Palma wrote that appellant was currently being treated for a left meniscal tear and that the onset of pain occurred approximately three weeks prior to a February 10, 2014 office visit. He noted that arthroscopic surgery with meniscectomy had been performed on February 26, 2015. Dr. Palma attributed appellant’s condition to excessive stair climbing, which he noted was a frequent work task.

By decision dated May 22, 2015, OWCP denied appellant's claim, finding that he had failed to establish that the incident occurred as alleged. In support of its decision, it referenced the delay in filing his claim, lack of witness statements, and lack of a statement from someone with immediate knowledge of his injury.<sup>3</sup>

On June 12, 2015 appellant, through counsel requested an oral hearing before an OWCP hearing representative, which was held on September 15, 2015. During the hearing appellant testified regarding his duties, which he stated required frequent ascending and descending steps.

By decision dated November 18, 2015, an OWCP hearing representative affirmed the denial of appellant's claim. She found that the statements from the employing establishment were not supportive of appellant's testimony, but did show that appellant was required to climb 10 steps 6 times per day and that no heavy lifting was required on February 9, 2015. The hearing representative further found that the medical evidence of record was insufficient to establish appellant's claim due to the lack of understanding of appellant's job duties by his treating physicians.

Subsequent to its decision, OWCP received additional reports from Dr. Palma dated October 30, November 13 and December 11, 2015. It also received reports dated January 25 and March 14 and 25, 2016 from Dr. James Rubano, a treating Board-certified orthopedic surgeon.

On October 30, 2015 Dr. Palma reported that appellant had been seen for a follow-up visit for bilateral knee discomfort and pain. Medical and illness histories were detailed in the report. Appellant related a worsening in his right knee and a swollen knee following a work capacity evaluation on June 30, 2015. A physical examination revealed restricted right knee movement due to pain, normal left knee range of motion, tenderness on palpation of the medial joint line in both knees, and mild right knee effusion. Under impression, Dr. Palma noted left knee effusion and pain.

In a November 13, 2015 memorandum, Dr. Frank Sparandero, an employing establishment Board-certified internist and occupational medicine physician, noted that a work site and work status evaluation had been conducted on November 6, 2014 to determine whether there was a causal relationship between appellant's work activities and his severe bilateral knee osteoarthritis. He reported that review of the occupational health record and other documentation showed appellant had sustained bilateral knee work injuries. Referencing medical literature, Dr. Sparandero discussed the impact of stair climbing, squatting, bending, kneeling, and other repetitive movements as primary risk factors associated with knee injuries and osteoarthritis. He opined that appellant's bilateral knee osteoarthritis had been aggravated by his work duties of ascending and descending stairs over the years and by his limited knee flexion and extension. He recommended work restrictions/limitations to prevent further aggravation.

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<sup>3</sup> On August 18, 2015 OWCP received a June 18, 2015 notice of occupational disease (Form CA-2) alleging a bilateral knee injury since February 5, 2015. Appellant had filed another Form CA-2 alleging bilateral knee injury since August 2013 which OWCP assigned File No. xxxxxx349. Appellant's occupational disease claims are not presently before the Board.

On November 30, 2015 Dr. Todd M. Lipschultz, an examining Board-certified orthopedic surgeon, examined appellant for his bilateral knee complaints, reviewed medical records, and noted his work and medical histories. A physical examination of both knees revealed changes consistent with osteoarthritis, bilateral medial joint line tenderness, mild bilateral knee flexion contraction, and no instability. Dr. Lipschultz diagnosed bilateral knee osteoarthritis which he attributed to multiple occupational knee injuries and he noted that he concurred with Dr. Sparandero's opinion.

Dr. Palma, in a December 11, 2015 report, noted appellant's follow-up visit for his knee condition. Appellant reported an improvement in his condition since he quit his job. Dr. Palma reiterated appellant's medical history from prior reports. A physical examination revealed normal bilateral knee range of motion, tenderness on palpation of the left knee medial joint line, and mild left knee atrophy. Diagnoses included left knee effusion and pain. Dr. Palma reported good progression following appellant's job change.

On December 21, 2015 and January 25, 2016 Dr. Rubano noted appellant's bilateral knee complaints including stiffness, pain, swelling, and giving way. He noted that the onset of the condition occurred in November 2013 when appellant twisted his knee and suffered meniscal tears when his boot got frozen to the floor. In February 2015 appellant reinjured his left knee due to repetitive stair climbing. Medical and illness histories were noted and physical examination findings detailed. Dr. Rubano diagnosed bilateral unilateral primary arthritis.

In a February 20, 2016 addendum, Dr. Lipschultz diagnosed bilateral progressive knee degeneration, chondral injury, and meniscal tearing. He opined that appellant's work duties aggravated the preexisting bilateral knee condition. In support of this conclusion, Dr. Lipschultz noted that in February 2015 appellant was required to lift heavy cases as well as ascend and descend stairs. He opined that appellant's knee joint effusions were the result of excessive knee stress which had aggravated his articular cartilage disorder.

In a February 25, 2016 report, Dr. Rubano noted medical and employment injury histories including medical evidence reviewed. Based on his review of the medical and factual evidence, he reported that appellant appeared to have sustained a work injury to his right knee on November 5, 2013 and to the left knee on August 26, 2014. Dr. Rubano noted that arthritic changes were seen at the time of appellant's arthroscopic surgeries for his right and left knees. He further opined that the job duties, as described by Dr. Sparandero in a work site evaluation on November 13, 2015, would have aggravated his underlying knee arthritis. Dr. Rubano noted the work activities as including repetitive and frequent descending and ascending stairs/steps, carrying tools while ascending and descending, stooping/bending, and twisting leg movement.

On March 25, 2016 Dr. Rubano provided a clarification by noting that appellant returned to full-time work from February 5 to 12, 2015. He opined that appellant's work duties as described by Dr. Sparandero aggravated appellant's bilateral knee conditions.

By decision dated September 20, 2016, OWCP denied modification. It found the medical evidence of record insufficient to establish an injury causally related to appellant's employment duties on February 9, 2015.

## **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>5</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>6</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a fact of injury has been established.<sup>7</sup> First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.<sup>8</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>9</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>10</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and the compensable employment factors.<sup>11</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>12</sup>

## **ANALYSIS**

OWCP's hearing representative found that the evidence established that on February 9, 2015 appellant's employment duties involved walking up and down 10 stairs, 6 times a day, with

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<sup>4</sup> *Supra* note 2.

<sup>5</sup> *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>6</sup> *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>7</sup> *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 5.

<sup>8</sup> *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

<sup>9</sup> *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 5.

<sup>10</sup> *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

<sup>11</sup> *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

<sup>12</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

no heavy lifting while on the stairs. However, OWCP denied appellant's claim as it found that the medical evidence failed to establish that the accepted February 9, 2015 employment duties caused or aggravated a bilateral knee condition.

The issue on appeal is whether the medical evidence appellant submitted is sufficient to establish a traumatic injury caused or aggravated by ascending and descending 10 or less stairs 6 times on February 9, 2015. As discussed above, the medical evidence submitted must include proper medical and factual histories and an opinion explaining the causal relationship between the diagnosed condition and the February 9, 2015 work incident.<sup>13</sup>

The Board finds that appellant has not established a traumatic injury due to the accepted stair climbing he performed on February 9, 2015.

The record contains multiple reports from Dr. Palma diagnosing left leg joint pain, left knee joint effusion, left knee degenerative joint disease, left meniscal tear, left knee tear/sprain, and noted an uncertain date of injury. He provided reports dated April 28, 2014 and October 30 and December 11, 2015, diagnosing left knee conditions. However, Dr. Palma offered no opinion as the cause of the diagnosed conditions. The Board has held that medical opinion evidence that offers no opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>14</sup>

The record also contains reports dated February 10, March 10, and April 7, 2015, in which Dr. Palma attributed appellant's diagnosed knee conditions to excessive stair climbing at work. This opinion is based upon an incorrect history of injury. OWCP accepted that appellant climbed 10 stairs, 6 times on February 9, 2015. It did not accept that appellant performed "excessive stair climbing" on the day in question. Dr. Palma, therefore, did not provide an opinion regarding causal relationship based upon an accurate history of the February 9, 2015 employment duties standing apart from employment duties on other dates.<sup>15</sup> His reports are, therefore, insufficient to meet appellant's burden of proof.

Dr. Lipschultz, in a February 20, 2015 addendum, diagnosed bilateral knee osteoarthritis. He attributed the aggravation of appellant's bilateral knee condition to work duties in February 2015 when appellant was required to lift heavy cases in addition to ascending and descending stairs. The mechanism of injury described by Dr. Lipschultz is inconsistent with OWCP's accepted February 9, 2015 employment duties. OWCP found that appellant was required to ascend and descend stairs, but that he was not required to lift heavy cases. The Board has held that medical opinions based on an inaccurate history, such as that of Dr. Lipschultz, are of diminished probative value.<sup>16</sup> As a result, his report is insufficient to meet appellant's burden of proof.

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<sup>13</sup> *Id.*

<sup>14</sup> *M.S.*, Docket No. 16-1497 (issued December 20, 2016); *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>15</sup> *J.M.*, Docket No. 17-1002 (issued August 22, 2017).

<sup>16</sup> *M.W.*, 57 ECAB 710 (2006); *James R. Taylor*, 56 ECAB 537 (2005).

The record also contains reports from Dr. Sparandero and Dr. Rubano. Both Dr. Sparandero and Dr. Rubano opined that appellant's bilateral knee osteoarthritis had been aggravated by appellant's work duties. Similarly, Dr. Lipschultz, in a November 30, 2015 report, also opined that appellant's bilateral knee conditions had been aggravated by his work duties and multiple knee injuries. The Board finds that Drs. Lipschultz, Rubano, and Sparandero are attributing the aggravation of appellant's bilateral knee conditions to an occupational injury produced by his employment duties over a period longer than a single workday or shift, rather than an injury from a single occurrence within a single workday or shift as alleged in this claim.<sup>17</sup> Moreover, the opinions of these three physicians on causation fail to provide a sufficient explanation of the mechanism of injury pertaining to this traumatic injury claim, namely, how going up and down 10 stairs, 6 times on February 9, 2015, would cause or aggravate appellant's knee injury.<sup>18</sup> Thus, these opinions fail to provide sufficient support to establish a traumatic injury claim as they are insufficient to meet his burden of proof.<sup>19</sup>

On appeal counsel argues that appellant has established fact of injury. In addition, counsel requested that the Board remand the case to combine this file with appellant's occupational disease claim under OWCP File No. xxxxxx349. For the reasons discussed above, the Board finds that the medical evidence of record is insufficient to establish a medical condition causally related to the accepted employment duties on February 9, 2015. The Board further finds that there is insufficient reason provided to require that appellant's present claim be combined with his occupational disease claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish a traumatic injury causally related to his accepted employment duties on February 9, 2015.

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<sup>17</sup> A traumatic injury means a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

<sup>18</sup> *S.W.*, Docket 08-2538 (issued May 21, 2009).

<sup>19</sup> *S.R.*, Docket No. 12-1098 (issued September 19, 2012).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 20, 2016 is affirmed.

Issued: January 8, 2018  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board